Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45
Service Seeks Comment on Certain of the	)	
Commission's Rules Relating to High-Cost	)	FCC 03J-1
Universal Service Support and the ETC	)	
Designation Process	)	

REPLY COMMENTS OF GVNW CONSULTING, INC.

GVNW Consulting, Inc.
By: Jeffry H. Smith
Consulting Manager
PO Box 2330
Tualatin, OR 97062
Phone: 503.612.4409
email: jsmith@gvnw.com

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Summary of Reply Comments

The comments of competitive providers are riddled with two false assumptions: One, that additional ETC designations necessarily increase competition and two, that all competition in rural areas is beneficial to the public interest. Despite what some regulators appear to believe, promoting competition for its own sake alone does not satisfy the Act's public interest standard, especially in rural America: promoting competition is but one factor in a much more complex equation.

The important principle that the Joint Board and Commission must adhere to is that rate-of-return carriers are entitled, as a matter of law, to a FULL recovery of their costs in providing interstate services. One of the key components of this cost recovery is the revenue received from federal universal service fund (USF) support. Federal USF is a cost recovery mechanism for rural carriers. In the event that the objectives of competition and universal service cannot be reconciled, universal service must take precedence over competition.

AT&T errs at page 24 of their pleading by stating, "ILECs should recover any lost revenues, if at all, through the SLC." With respect to applicability for rural carriers, AT&T's bold assertion is neither creative nor consistent with current public policy. It ignores the quantitative body of work of the Rural Task Force (RTF), in which AT&T fully participated as a signatory to the RTF report. It ignores Commission rulings in both the universal service and rural access charge dockets of the past three years. And, it ignores the magnitude of the impact to certain rural carriers.

Introduction and Background

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory support on issues such as universal service, advanced services, and access charge reform for communications carriers in rural America. We are pleased that the Federal-State Joint Board on Universal Service has requested comments and replies on the issues referred by the Commission.

The purpose of these reply comments is to respond to the Commission's Public Notice seeking comments and replies dated February 7, 2003. On November 8, 2002, the Federal Communications Commission (Commission) requested that the Federal-State Joint Board on Universal Service (Joint Board) "review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled."[1] In particular, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (ETC) is providing services, as well as the Commission's rules regarding support for second lines.[2] The Commission also asked the Joint Board to examine the process for designating ETCs.[3]

[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002) (*Referral Order*).

[2] *Id.*

[3] *Id.*

GENERAL ISSUES

As a preface to discussing the various federal universal service support questions posed by the Joint Board, it is appropriate to examine the unsupported claims of some of the respondents.

Competitive Carriers offer unsupportable assertions

In several recent Commission proceedings, competitive providers have attempted to advocate a position based on vague generalities. Western Wireless (WW) continues this cacophony with their May 5 comments:

- WW asserts that ROR regulation creates "pernicious" incentives for rural carriers. On the contrary, ROR regulation has provided the ability to create a rural infrastructure that enables rural customers to receive comparable service to urban consumers.[4]

- WW asserts that costs are high for rural wireless providers, without providing support.

- WW erroneously defines portability as each ETC receiving the same dollar amount of support per customer served. While this is indeed the present application, support is still portable under a mechanism that requires a carrier such as WW to meet certain standards or cost showings.

[4] Notwithstanding GCI's current play to receive UNE-based support in Alaska, GCI is incorrect in its assertion that current rural high-cost mechanisms lack a coherent and unifying framework. For the most part, the system has allowed rural carriers to recover the high costs of serving remote regions of the country.

In certain state jurisdictions, ILECs that are ETCs hold what is commonly referred to as a "certificate of convenience and necessity". In the search for its Holy Grail of multiple ETC designations, it appears that carriers such as Western Wireless are attempting to define competitive neutrality by applying a concept of "regulation of convenience or necessity" to the incumbent carrier. In just the past six weeks, carriers such as WW alternately either desire to remove some level of regulation from the incumbent carrier if they believe that such a requirement might be placed on them[5], or believe that such regulation provides the ILEC customer with some form of choice.[6]

However, this creative, yet inconsistent ploy is less egregious than AT&T's assertion that "ILECs should recover any lost revenues, if at all, through the SLC". We refute this latest AT&T assertion at page 9 and 10 of these reply comments.

STATE OF THE MARKETPLACE AND UNIVERSAL SERVICE FUND

Growth of Fund

The question is asked (paragraph 11) as to what extent CETC support will increase over time. NASUCA (page 2) correctly observes that while the wireless industry may currently account for only a small part of the current needs of the fund, that is likely to change dramatically as additional eligible wireless carriers obtain ETC status.[7]

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[5] WW ex parte assertion that with respect to equal access, the FCC "would better advance the interests of consumers by reducing the regulatory obligations of ILECs, rather than increasing the regulation of wireless carriers." May 21, 2003 ex parte by CTIA, Western Wireless and US Cellular with Jessica Rosenworcel and Paul Margie, legal advisors to Commissioner Copps.

[6] WW claims that equal access by ILECs provides choice for those customers. WW Comments in CCD No. 96-45, dated April 14, 2003, page 6, including footnote 4.

[7] See also OPASTCO, page 9, stating that the size of the USF will grow to an unsustainable level if the methodology for computing CETC support is not changed.

Wireless Substitution

At paragraph 14, the Joint Board requests comments on the issue of "to what extent does wireless or other technology represent the addition of complementary service rather than substitution for traditional wireline in rural and high-cost areas?"

An observation with respect to this question is found in the AT&T statement at page *i* of their filing that the status quo serves as a "back door way to support wireless infrastructure development through the USF."

METHODOLOGY FOR CALCULATING SUPPORT IN COMPETITIVE STUDY AREAS

Recognizing the increasing support received by competitive carriers, the Joint Board poses a series of questions concerning competitive entry and portability of support.

Portable Support

In attempting to answer the question as to whether the current rules are competitively neutral, it can be instructive to view what the investment community says, as they are the source of funds for many large telecommunications entities. Salomon Smith Barney's view of the USF issue on January 21, 2003 was as follows:

> *"USF is the single most important opportunity for rural wireless carriers to improve their return on capital."*[8]

Auctions

At paragraph 20, the issues surrounding awarding federal universal service high-cost support based on some form of bidding or auction is addressed. As we stated in our comments, any consideration of auctions should be bifurcated between non-rural and

[8] Years ago, the late actor John Houseman was the voice for the Smith Barney ad, "We make money the old-fashioned way, we EARN it." It remains to be seen whether receiving support based on another carriers' costs can be considered truly EARNING the money.

rural. The issues surrounding rural service areas are different from the circumstances experienced by non-rural providers.

One of the most significant challenges in implementing an auction proposal is that there are no apparent incentives for an auction winner to invest in the rural infrastructure. As the Alaska Telephone Association points out at page 18 of their comments, a system for distributing USF based on the lowest bidder creates a "race to the bottom" as opposed to infrastructure development. OPASTCO also offers at page 28 of their filing that utilizing auctions would not provide carriers with the proper incentives to invest in high-cost areas and would seriously endanger the quality and ubiquity of service.

Mobile Wireless Location Issues

In our comments, we recommended that the current rule allowing the billing address to determine the location should be replaced with the use of an actual residential or billing address[9].

Two additional recommendations were offered in comments that merit consideration. First, Bell South (page 11) recommended that the Commission should adopt a customer certification requirement that would require that a customer be capable of receiving a signal at a customer's billing address in order to receive support for that line.

[9] We further recommended that if such an address is not available, then the customer should be considered to be located in the zone with the lowest per line support. Such a change could serve to ameliorate the current abuse of the system in which a wireless carrier establishes a billing presence where the largest amount of high-cost support is available.

Second, WITA recommends, based on the experience in Washington State with the Toledo exchange[10], that the Commission should require a wireless carrier to certify that at least 50% of the originating calls on a wireless service originate in a cell site within the exchange for which the line is designated as a USF supported line.

SCOPE OF SUPPORT

Under the scope of support section, the issue of whether to provide federal universal service support to only primary lines is addressed via a long series of questions. We will address the issues concomitant to this topic in a consolidated fashion.

AT&T's SLC proposal lacks logic for rural carriers

AT&T errs at page 24 of their pleading by stating, "ILECs should recover any lost revenues, if at all, through the SLC." Such a proposal fails in many rural areas for rate-of-return carriers.[11] With respect to applicability for rural carriers, AT&T's bold assertion is neither creative nor consistent with current public policy. It ignores the quantitative body of work of the Rural Task Force (RTF), in which AT&T fully participated as a signatory to the RTF report. It ignores Commission rulings in both the universal service and rural access charge dockets of the past three years. And, it ignores the magnitude of the impact to certain rural carriers. As NTCA states at page iii, such

[10] WITA states "the numbers that US Cellular report for the Toledo Telephone Company exchange defy logic."

[11] The guiding principle that the Joint Board and Commission must adhere to is that rate-of-return carriers are entitled, as a matter of law, to a **full** recovery of their costs in providing interstate services. One of the key components of this cost recovery is the revenue received from federal universal service fund (USF) support. The Commission itself has recognized that the costs of rural carriers are higher than non-rural carriers. See, for example, the Rural Task Force's White Paper 2. This research was corroborated in NECA's recent *Trends in Telecommunications Cost Recovery: The Impact on Rural America* report released in October, 2002.

high-cost support reflects the legitimate costs of rate-of-return carriers serving their entire study areas.

We have provided empirical data in Exhibit A in the initial comments filed on May 5. We are once again including, with these reply comments, this Exhibit A data that reflects the stratified support per loop per month data for the 1246 study areas that were detailed in Exhibit B in the initial filing (available for review on GVNW's website: gvnw.com). Depending on what type of methodology might be used, the loss of support for certain lines could have a deleterative impact on certain rural carriers. We believe that the data presented in Exhibit A support a conclusion that universal service support should continue for all lines in rural study areas, and that a SLC increase is not the total answer in many rural service areas.

PROCESS FOR DESIGNATING ETCs

System of designating

The comments of competitive providers are riddled with two false assumptions: One, that additional ETC designations necessarily increase competition and two, that all competition in rural areas is beneficial to the public interest. To review, the standard established by law is as follows[12]:

[12] 47 U.S.C. § 214(e)(2) (emphasis added): Upon request and consistent with the public interest, convenience, and necessity, the State commission **may**, in the case of an area served by a rural telephone company, and **shall**, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

We concur with the Century Tel statement that despite what some regulators appear to believe, promoting competition for its own sake alone does not satisfy the Act's public interest standard, especially in rural America: promoting competition is but one factor in a much more complex equation. As RTFC states, without adequate recovery of costs, rural telephone companies will not be able to secure debt or equity capital to invest in modern infrastructure.

As we stated in our comment filing, it appears that in some cases states have confused the "**shall**" applicable to non-rural areas with the "**may**" designation that is intended to be applied to an analysis of a request for multiple ETCs in a rural study area.

Public Interest Tests

We concur with Commissioner Adelstein's comments to a USTA gathering in February of this year regarding areas served by rural carriers, that a "more rigorous public interest test must take place before a competitive carrier is granted eligibility status."

Further, the purpose of what the legislation attempts to accomplish is relevant with respect to ETC designation issues. Senator Byron Dorgan, who introduced the amendment to the 1996 Act that requires a public interest finding before designating a second ETC in a rural area, said in part[13]: The protection of universal service is the most important provision in this legislation. S.652 contains provisions that make it clear that universal service must be maintained and that citizens in rural areas deserve the same benefits and access to high quality telecommunications services as everyone else.

[13] Congressional Record of June 8, 1995, S 7951-2.

Respectfully submitted,

electronically submitted through ECFS

GVNW Consulting, Inc.
Jeffry H. Smith
Consulting Manager
PO Box 2330
Tualatin, OR 97062
Phone: 503.612.4409
email: jsmith@gvnw.com

EXHIBIT A – SUMMARY STRATIFICATION OF UNIVERSAL SERVICE SUPPORT PER LINE COMPUTATIONS BASED ON USAC 2ND QUARTER 2003 PROJECTIONS (HC01 AND HC 14)

NUMBER OF ILEC STUDY AREAS WITH SUPPORT PER LOOP EXCEEDING	
$500 PER LOOP PER MONTH	3
$200 PER LOOP PER MONTH	11
$100 PER LOOP PER MONTH	51
$75 PER LOOP PER MONTH	95
$50 PER LOOP PER MONTH	206
$25 PER LOOP PER MONTH	515
$20 PER LOOP PER MONTH	631
$15 PER LOOP PER MONTH	817
$10 PER LOOP PER MONTH	1026
$5 PER LOOP PER MONTH	1188
TOTAL COMPANIES IN SAMPLE	1246